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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 161

Decided: June 26, 2000

Environmental Condition No. 8(A) of Appendix Q of Decision No. 89¹ (Decision No. 89, slip op. at 393-94), requires Applicants, in order to address potential safety impacts at highway/rail at-grade crossings, to upgrade existing warning devices at 86 public highway/rail at-grade crossings listed in the decision. Environmental Condition No. 8(A) further provides that: “To the extent practicable, Applicants shall prioritize for improvement those highway/rail at-grade crossings that have the greatest level of projected train traffic increases. If Applicants execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation, they may implement alternate safety improvements in the vicinity of these identified highway/rail at-grade crossings that achieve at least an equivalent level of safety enhancement. Applicants shall complete these upgrades or improvements within 2 years of the effective date of the Board’s decision, and shall certify to the Board such completion on a quarterly basis during this 2-year period.”

On April 28, 2000, NS submitted a signed Negotiated Agreement with the Indiana Department of Transportation (INDOT) and the Tippecanoe County Board of Commissioners, West Point, IN. The Negotiated Agreement was dated and signed August 12, 1999, by NS and INDOT, and accepted and approved by the Tippecanoe County Board of Commissioners on September 8, 1999.

As pertinent here, Environmental Condition No. 8(A) specifically requires that NS install “Flashing Lights” at the CR 400 South at-grade crossing in Tippecanoe County, West Point, IN.

¹ In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

NS advises that, in accordance with Environmental Condition No. 8(A), the Negotiated Agreement provides for the closure of the NS at-grade crossing at CR 400 South, superseding the requirement that flashing lights be installed at this crossing.²

According to NS, the Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. In view of the Negotiated Agreement with INDOT and the Tippecanoe County Board of Commissioners, NS requests that Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 be amended by deleting the requirement that NS install "Flashing Lights" at the CR 400 South at-grade crossing in Tippecanoe County, West Point, IN, and that Environmental Condition No. 51 of Appendix Q of Decision No. 89 be amended by adding the Negotiated Agreement signed by NS, INDOT, and the Tippecanoe County Board of Commissioners to the list of Negotiated Agreements entered into by NS. Environmental Condition No. 51 requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. INDOT and the Tippecanoe County Board of Commissioners concur with the request.

NS' request will be granted. Accordingly, we will: (1) add the Negotiated Agreement signed by NS and INDOT on August 12, 1999, and approved and accepted by the Tippecanoe County Board of Commissioners on September 8, 1999, to Environmental Condition No. 51 of Appendix Q of Decision No. 89, and (2) delete the reference to the installation of "Flashing Lights" at the CR 400 South at-grade crossing in Tippecanoe County, West Point, IN, from Environmental Condition No. 8(A) of Appendix Q of Decision No. 89, because the application of that particular condition to this crossing has been superseded by the parties' Negotiated Agreement.

² NS and INDOT explain in the Negotiated Agreement that they have been concerned about crossing safety and, for this reason, have been discussing a highway-rail corridor project with the Tippecanoe County Highway Department (County). To reduce the number of redundant crossings in the area with little traffic, NS, INDOT, and the County developed a proposal to close the crossings at County Roads 400 South and 575 West. The County would then construct a connecting road north of the tracks between CR 400 South and CR 500 West, which would allow traffic on CR 400 South to detour with minimal inconvenience and prevent the creation of a dead-end road. NS and INDOT advise that, if both crossings can be closed, INDOT would fully fund the installation of gates and lights at the CR 500 West crossing. As described in the Negotiated Agreement, in recognition of the County's consent to close the two crossings, NS would provide a grant to the County which could be used to fund a significant part of the connecting road construction. In addition, NS states that its Real Estate Department will also work with the County towards granting an easement for the connecting road so that property acquisition costs can be kept to a minimum.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. In accordance with the Negotiated Agreement signed by NS and INDOT on August 12, 1999, and approved and accepted by the Tippecanoe County Board of Commissioners on September 8, 1999, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

**18. Indiana Department of Transportation (INDOT) and the
Tippecanoe County Board of Commissioners Negotiated
Agreement, signed by NS and INDOT on August 12, 1999,
and approved and accepted by the Tippecanoe County Board
of Commissioners on September 8, 1999.**

3. In addition, Environmental Condition No. 8(A) of Appendix Q of Decision No. 89 is amended to delete the reference to the installation of "Flashing Lights" at the CR 400 South at-grade crossing in Tippecanoe County, West Point, IN, because the application of that condition to this particular crossing has been superseded by the parties' Negotiated Agreement.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary